

EXHIBIT 10

S 152098

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the matter of
SANTIAGO MONTENEGRO
On Habeas Corpus

COURT OF APPEAL NO. B197875

SANTA BARBARA COUNTY

Super. Ct. No. 122669

FILED

APR 20 2007

Frederick K. Ohrich Clerk

Deputy

PETITION FOR REVIEW

TO: THE HONORABLE CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Santiago Montenegro, petitioner herein respectfully requests review following the decision of the Court of Appeal, Second Appellate District, filed on April 11, 2007, denying his petition for writ of habeas corpus. A copy of the denial of the court of appeal is attached hereto as Exhibit (1). Service was by mail, thus 5-day tolling applies (CCP § 1013).

I.

QUESTIONS FOR REVIEW

This case presents the following questions for review:

(1) Is it a violation of due process and state law for the Board of Parole Hearings decision finding that petitioner pose a threat to society is not supported by any evidence and is punitive in nature?

(2) Is it a violation of petitioner's right to due process for the Board of Parole Hearings to find petitioner unsuitable for parole at his 3rd parole hearing based on immutable factors

1 of the commitment offense and his prior conduct, rendering the
2 decision arbitrary and an abuse of discretion.

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4 II.

5 JURISDICTION OF THE COURT

6 Petitioner has exhausted all lower court remedies. Thus,
7 petitioner having been placed in jeopardy and danger of irrepar-
8 able harm, this court has jurisdiction (Employees Association v.
9 City of Glendale (1975) 15 Cal. 3d 320, 342).

10 There is no issue of "comity" since both state and federal
11 due process standards are offended. This is particularly true
12 since the California standard of due process is more stringently
13 protective of individual (People v. Ramirez (1979) 25 Cal. 3d
14 260).

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16 III.

17 HISTORY OF THE CASE

18 Petitioner, Santiago Montenegro was convicted of second
19 degree murder and sentenced to an indeterminate prison term of
20 15-years-to life. His Case Number is SM073867. He was recieved
21 into the California Department of Corrections & Rehabilitations
22 on November 6, 1992. At that time the department set his Minimum
23 Eligibile Parole Date for February 3, 2003. On August 16, 2006
24 petitioner's third parole consideration was held and the petiti-
25 oner was found unsuitable for parole and received a one year
26 deferment.

IV.

ARGUMENTS FOR REVIEW

- (1). IS IT A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS AND STATE LAW FOR THE BOARD OF PAROLE HEARINGS DECISION FINDING THAT PETITIONER POSES A THREAT TO SOCIETY IS NOT SUPPORTED BY ANY EVIDENCE AND IS PUNITIVE IN NATURE?

The Supreme Court held that there must be "some evidence" to support the Board's determination. (In re Powell (1988) 45 Cal. 3d 894, 904).

The requirement of due process are satisfied if some evidence supports the the decision. This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced".

There is no evidence that the nature of the commitment offense or prior conduct is demonstrative of petitioner's current level of dangerousness or that he poses a threat to public safety. (In re Smith (2003) 109 Cal. App. 4th 489, 505, emphasis in original).

➤ The Board of Parole Hearings offered no supportable, tangible or reliable evidence that petitioner's current level of dangerousness poses a threat to public safety.

Because Petitioner cannot change the past, denying a parole date based only on facts surrounding the crime itself effectively changed his sentence from fifteen years to life into life imprisonment without the possibility of parole.

This case, while resting on state due process (Cal. Const, art. I, § 7, subd. (a)), compares favorably to cases affording habeas corpus relief on federal due process grounds,

1 against parole denials for California inmates with exemplary
2 postoffense records who had been sentenced to terms of at
3 least 15 years to life for second degree murder. In one, the
4 same inmate earlier involved in the Supreme Court's decision
5 in *Rosenkrantz* had offended at age 18, shooting a younger br-
6 other's friend who had revealed the inmate's homosexuality to
7 the inmate's intolerant father. The court found due process
8 violated when the former Board of Prison Terms (BPT) denied
9 parole, as it had before, based on the gravity of the commit-
10 ment offense. (*Rosenkrantz v. Marshall* (C.D. Cal. 2006) 444 F.
11 Supp. 2d 1063, 1065, 1070.) The court reasoned in pertinent
12 part: "While relying upon petitioner's crime as an indicator
13 of his dangerousness may be reasonable for some period of
14 time, in this case, continued reliance on such unchanging ci-
15 rcumstances--after nearly two decades of incarceration and
16 half a dozen parole suitability hearings--violates due proc-
17 ess because petitioner's commitment offense has become such
18 an unreliable predictor of his present and future dangerous-
19 ness that it does not satisfy the 'some evidence' standard.
20 After nearly twenty years of rehabilitation, the ability to
21 predict a persons future dangerousness based simply on circu-
22 mstances of his or her crime is nil. [Citations]. (Id. at p.
23 1084.) "Furthermore," the court reasoned, "the general unrel-
24 iability of predicting violence is exacerbated.

25 The Board of Parole Hearings violated published guide-
26 lines and their action is solely punitive in action.

1 (2). IS IT A VIOLATION OF PETITIONER'S RIGHT TO
2 DUE PROCESS FOR THE BOARD OF PAROLE HEARINGS
3 TO FIND PETITIONER UNSUITABLE FOR PAROLE AT
4 HIS 3RD PAROLE HEARING BASED ON IMMUTABLE
5 FACTORS OF THE COMMITMENT OFFENSE AND HIS
6 PRIOR CONDUCT, RENDERING THE DECISION ARBIT-
7 RARY AND AN ABUSE OF DISCRETION.

8 A review of penal code section 3041 (a) and (b) and
9 California Code of Regulations, Title 15, section 2000 et seq
10 indicates a statutory scheme which contains mandatory lang-
11 uage and substantive guidelines to exercise of official dis-
12 cretion that gives rise to a protected liberty interest in
13 parole, curing the "arbitrary decision process".

14 The Board of Parole Hearings regulations and guidelines
15 are valid and have the force and effect of law and the Board
16 must follow their own regulations and guidelines.

17 The quantum of process due is that which is minimal
18 required by the constitution unless, as itself to a higher
19 level of process...[cits. omitted] (Kindred v. Spears (5th
20 Cir. 1990) 894 F.2d 1475, 1481-1482, citing Marshall v. Lan-
21 cing (3rd Cir. 1988) F.2d 933, 943).

22 By requiring the government to follow appropriate pro-
23 cedures when its agents decide to "deprive any person of life
24 liberty and property", the due process clause promotes fair-
25 ness in such decision. (People v. Ramirez (1979) 25 Cal. 3d
26 260, 269.

27 The continued reliance on unchanging factor, the cir-
28 cumstances of the offense and conduct prior to imprisonment,
runs contrary to the rehabilitative goals espoused by the
prison system and could result in a due process violation.

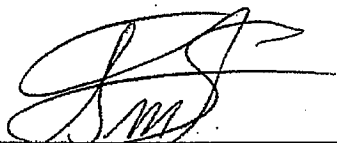
1 In case at bench, that due process violation has arrived.
2 (Biggs v. Terhune, supra, 334 F. 3d at 916-917).

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4 CONCLUSION

5 For the foregoing reasons, it is respectfully requested
6 that this petition for review be granted in the interest of
7 justice to address the important questions of law of a state-
8 wide importance.

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13 Date: 4-18-07

Respectfully, submitted

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17 Santiago Montenegro
18 Petitioner In Pro Per
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DECLARATION OF SANTIAGO MONTENEGRO

I declare as follows:

I am the petitioner in this case. I am over the age of eighteen years. I am a party to the attached action. I am a resident of the Correctional Training Facility in Soledad, California. My address is Post Office Box 705/ND-12-UP, CTF North Facility, Soledad, California. 93960-0705. I served the attached document entitled "PETITION FOR REVIEW" on the persons/parties specified below by placing a true copy of said document into a sealed envelope with the appropriate postage affixed thereto and surrendering said envelope to the following:

OFFICE OF THE ATTORNEY GENERAL
300 S. SPRING STREET
LOS ANGELES, CA. 90013

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
200 EAST SANTA CLARA ST.
VENTURA, CALIFORNIA. 93001

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 18th day of April, 2007 at the Correctional Training Facility in Soledad, California.



Declarant

EXHIBIT 1

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 6

April 11, 2007

In re
Santiago Montenegro
on Habeas Corpus

B197875
Santa Barbara County No. SM73867

THE COURT:

The petition for writ of habeas corpus is denied.

Santiago Montenegro
H55090
Correctional Training Facility
P.O. Box 686
Soledad, CA 93960

Case Number B197875
Division 6
In re
Santiago Montenegro
on Habeas Corpus

Name Santiago Montenegro
 Address P.O. Box 705/ND-12-L
CTF North Facility
Soledad, CA. 93960-0705
 CDC or ID Number H-55090

MC-275

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA BARBARA

FEB 22 2007

GARY M. BLAIR, Executive Officer
 BY M.N. Rodriguez
 M.N. RODRIGUEZ, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
 (Court)

Santiago Montenegro
Petitioner
vs.
Ben Curry:et.,al;
Respondent

PB6212
 PETITION FOR WRIT OF HABEAS CORPUS
1226699

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

SANTIAGO MONTENEGRO,
Petitioner on Habeas Corpus,
vs.
BEN CURRY, et al.
Respondent.

Case No.: 1226699

Denial of Petition for Habeas Corpus

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR 15 2007

GARY M. BLAIR, Executive Officer
BY M.N. Rodriguez
M.N. RODRIGUEZ, Deputy Clerk

The court has read and considered the Petition for Writ of Habeas Corpus filed on behalf of Santiago Montenegro, but hereby denies the Petition for failure to state facts on which relief can be granted. (*People v. Swain* (1949) 34 Cal.2d 300, 304). This court is not free to reconsider the "some evidence" standard of review confirmed by the State Supreme Court in *In Re Dannenberg* (2005) 34 Cal.4th 1061. "Some evidence" for the decision of the Board of Prison Terms is found in the circumstances of the underlying life crime, which as compared to other second-degree murders was carried out in an especially callous manner, with use of a firearm, for a trivial reason, and was followed by protracted flight and belated admission of guilt. The Board was appropriately concerned with petitioner's disciplinary history during incarceration and failure to provide viable plans following release, notwithstanding contrary evidence of institutional sobriety, active AA work, and an exemplary work record. The Board also heard from the District Attorney's office in opposition to release. These factors are not immutable in their significance as the Board reconsiders the issue of parole suitability in the future.

DATED: March 15, 2007

James P. Rigali
JAMES RIGALI
Judge of the Superior Court